Reg. No. GR/RNP/GOA/32

2003 YEAR OF THE CHILD

RNI No. GOAENG/2002/6410

Panaji, 24th April, 2003 (Vaishaka 4, 1925)

SERIES II No. 4

OFFICIAL GAZETTE

GOVERNMENT OF GOA

Note:- There are Two Extraordinary issues to the Official Gazette, Series II, No. 3 dated 17-4-2003 as follows:-

1) Extraordinary dated 17-4-2003 from pages 57 to 58 regarding Notification from Department of Finance (Revenue and Control Division).

2) Extraordinary No. 2 dated 21-4-2003 from pages 59 to 60 regarding Form No. 2 from Department of Elections (Goa State Election Commission).

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Co-operative Societies

—

Notification

No. 5-895-2002/ARSZ/HSG

In exercise of the powers vested in me under section 9 of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa, Pearl, Diamond, Navratna & Paachu Co-op. Housing Society Ltd., Fatorda Margao-Goa is registered under code symbol No. HSG--(b)-400/South Goa/2002.

Sd/- (A. K. Kamat), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 22nd October, 2002.

Certificate of Registration

Pearl, Diamond, Navratna & Paachu Co-op. Housing Society Ltd., Fatorda, Margao-Goa has been registered on 22-10-2002 and it bears Registration code symbol No. HSG-(b)-400/South Goa/2002 and it is classified as "Housing Society" under sub-classification No. 5-(b) -Tenant Co-partnership Housing Society in terms of Rule 9 of the Co-operative Societies Rules, 1962 for the State of Goa.

Sd/- (A. K. Kamat), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 22nd October, 2002.

Notification

No. 5-896-2002/ARSZ/HSG

In exercise of the powers vested in me under section 9 of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa, Church View Complex Co-op. Housing Society Ltd., Varca, Salcete--Goa is registered under code symbol No. HSG-(b)-401/ /South Goa/2002.

Sd/- (A. K. Kamat), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 24th October, 2002.

Certificate of Registration

Church View Complex Co-op. Housing Society Ltd., Varca, Salcete-Goa has been registered on 24-10-2002 and it bears Registration code No. HSG-(b)--401/South Goa/2002 and it is classified as "Housing Society" under sub-classification No. 5(b) - Tenant Co--partnership Housing Society in terms of Rule 9 of the Co-operative Societies Rules, 1962 for the State of Goa.

Sd/- (A. K. Kamat), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 24th October, 2002.

Notification

No. ARCS/CZ/HSG/528/ADM/Goa.

In exercise of the powers vested in me under section 9(1) of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa, Nagar Co-operative Housing Society Ltd., Mardol, Ponda-Goa has been registered under code symbol No. ARCS/CZ/ /HSG/507(b)/Goa.

Sd/- (D. B. Naik), Asstt. Registrar of Co-op. Societies (Central Zone).

Panaji, 6th August, 2002.

Certificate of Registration

Nagar Co-operative Housing Society Ltd., Mardol, Ponda-Goa is registered on 06-08-2002 and it bears Registration No. ARCS/CZ/HSG/507(b)/Goa and it is classified as "Housing Society" under sub-classification

No. 5(b) "Tenant Co-partnership Housing Society" in terms of Rule 9(1) of the Co-operative Societies Rules, 1962 for the State of Goa.

Sd/- (D. B. Naik), Asstt. Registrar of Co-op. Societies (Central Zone).

Panaji, 6th August, 2002.

Notification

No. ARCS/CZ/HSG/539/ADM/Goa.

In exercise of the powers vested in me under section 9(1) of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa, Star 2001 Co--operative Housing Society Ltd., St. Inez, Panaji-Goa has been registered under code symbol No. ARCS/CZ/HSG/ /515-(b)/Goa.

Sd/- (D. B. Naik), Asstt. Registrar of Co-op. Societies (Central Zone).

Panaji, 4th October, 2002.

Certificate of Registration

Star 2001 Co-operative Housing Society Ltd., St. Inez, Panaji-Goa is registered on 4-10-2002 and it bears Registration No. ARCS/CZ/HSG/515-(b)/Goa and it is classified as "Housing Society" under sub-classification No. 5(b) "Tenant Co-partnership Housing Society" in terms of Rule 9(1) of the Co-operative Societies Rules, 1962 for the State of Goa.

Sd/- (D. B. Naik), Asstt. Registrar of Co-op. Societies (Central Zone).

Panaji, 4th October, 2002.

Notification

No. ARCS/CZ/HSG/545/ADM/Goa.

In exercise of the powers vested in me under section 9(1) of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa, Raj Garden Co-operative Housing Society Ltd., Khadpaband, Ponda-Goa has been registered under code symbol No. ARCS/CZ/HSG/517-(b)/Goa.

Sd/- (D. B. Naik), Asstt. Registrar of Co-op. Societies (Central Zone).

Panaji, 14th October, 2002.

Certificate of Registration

Raj Garden Co-operative Housing Society Ltd., Khadpaband, Ponda-Goa is registered on 14-10-2002 and it bears Registration No. ARCS/CZ/HSG/517-(b)/Goa and it is classified as "Housing Society" under sub-classification No. 5(b) "Tenant Co-partnership Housing Society" in terms of Rule 9(1) of the Co-operative Societies Rules, 1962 for the State of Goa.

Sd/- (D. B. Naik), Asstt. Registrar of Co-op. Societies (Central Zone).

Panaji, 14th October, 2002.

Notification

No. ARCS/CZ/HSG/546/ADM/Goa.

In exercise of the powers vested in me under section 9(1) of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa, Aman Co-operative Housing Society Ltd., Chimbel-Tiswadi--Goa has been registered under code symbol No. ARCS/CZ/HSG/516-(b)/Goa.

Sd/- (D. B. Naik), Asstt. Registrar of Co-op. Societies (Central Zone).

Panaji, 5th September, 2002.

Certificate of Registration

Aman Co-operative Housing Society Ltd., Chimbel--Tiswadi-Goa is registered on 5-9-2002 and it bears Registration No. ARCS/CZ/HSG-516(b)/Goa and it is classified as "Housing Society" under sub-classification No. 5(b) "Tenant Co-partnership Housing Society" in terms of Rule 9(1) of the Co-operative Societies Rules, 1962 for the State of Goa.

Sd/- (D. B. Naik), Asstt. Registrar of Co-op. Societies (Central Zone).

Panaji, 5th September, 2002.

Department of Home

Home-General Division

Order

No. 11/3/2003-HD(G)

As a one time measure Government has decided to consider pending applications for enrolling them as Freedom Fighters, for sanctioning them Pension under the Goa Freedom Fighters' Welfare Rules, 1988.

The following Committee will scrutinise the applications received for grant of pension under the above Scheme and decide the same:-

1.	Chief Secretary	... Chairman
2.	Special Secretary (Finance)	... Member
3.	Shri Vasant Molio	... Member
4.	Shri Krishnarao A. Rane	... Member
5.	Shri Nagesh Karmali	... Member
6.	Shri Kanta Gopi Gattawal	... Member
7.	Shri Ranganath Y. Naik	... Member
8.	Shri Chandrakant V. S. Kenkre	... Member
9.	Shri Muralidar Rane	... Member
10.	Shri Rohidas H. Naik	... Member
11.	Shri Pandurang R. S. Kunkoliencar	... Member
12.	Shri Vasant A. Dessai	... Member

By order and in the name of the Governor of Goa.

S. V. Naik, Joint Secretary (Home).

Panaji, 9th April, 2003.

Department of Labour

—

Order

No. 28/7/2001-LAB

The following Award dated 12/9/2002 in Reference No. IT/23/95 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vyas Ghaisas, Under Secretary (Labour).

Panaji, 24th October, 2002.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/23/95

Miss. Karuna Dias,
C/o Mrs. Iria Dias, Baixo de Igreja,
Agassaim - Goa. — Workman/Party I

V/s

M/s The Citizen Co-operative Bank Ltd.,
Vasco-da-Gama-Goa.
— Employer/Party II

Workman/Party I - Represented by Shri Subhas Naik.

Employer/Party II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated.: 12-9-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 26-4-1995 bearing No. 28/9/95-LAB referred the following dispute for adjudication of this Tribunal.

> "Whether the action of the management of M/s The Citizen Co-operative Bank Ltd., Vasco-da-Gama-Goa, in terminating the services of Kum. Karunna Dias, Clerk, with effect from 29-4-1994 is legal and justified?
>
> If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/23/95 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman-Party I (for short, "workman") filed her statement of claim. The facts of the case in brief as pleaded by the workman are that she was employed with the employer-Party II (for short, "employer") as a clerk with effect from 6-11-91. That initially she was issued an appointment letter dated 6-11-91 for a temporary period from 6-11-91 to 5-2-93 on daily wages of Rs.35/- per day. That thereafter she was issued appointment letters from time to time being dated 10-2-92, 2-6-92, 3-9-92, 29-12-92, 21-12-92, 23-3-93 and 23-6-93 appointing her for temporary periods as mentioned in the said letters. That she worked as clerk for the periods mentioned in the above said letters. That after the letter dated 23-6-93 no other letter was issued to her and she continued to work as a Clerk even after her appointment expired on 22-9-93 as per the letter dated 23-6-93 till her services were terminated without any break. That she reported for duty on 29-4-94 as well as on 30-4-94 but she was not allowed to report for work. That on 2-5-94 she reported for work and she worked for the whole day and on 3-5-94 also she reported for work and signed the muster roll but at about 10.30 a.m. the Manager called her and informed her that the Chairman had phoned him and asked him to send her home. That on 4-5-94 she reported for work and signed the muster roll and thereafter the Manager called her and handed over to her letter dated 29-4-94 terminating her services with retrospective effect from 29-4-93. That the contents of the said letter stating that her period of temporary appointment had expired are false and not correct as no temporary appointment letter was issued to her after 23-6-94. That on 4-5-94 she handed over the keys of the drawer, rubber stamp and files to the Asst. Chief Executive Officer vide letter dated 4-5-94 which was acknowledged by the employer. That against the termination order she raised industrial dispute with the employer vide letter dated 9-4-94 and demanded reinstatement in service with full back wages and continuity of service. That since the employer did not reply to the said letter she raised industrial dispute before the Asst. Labour Commissioner, Vasco, vide letter dated 20-7-94. That the conciliation proceedings held by the Asstt. Labour Commissioner resulted in failure and the failure report dated 16-2-95 was submitted by the Asstt. Labour Commissioner to the Government. The workman contended that after she was employed as a clerk w.e.f. 6-11-91 the employer employed 7 new clerks and after her services were terminated w.e.f. 29-4-94 the employer employed 6 new clerks. The workman contended that at the time when her services were terminated the employer retained 7 clerks who were junior to her in service and while recruiting new clerks she was not called in for employment. The workman contended that she had worked for more than 240 days at the time when her services were terminated and she was not given one month's notice nor she was paid notice pay or retrenchment compensation thereby violating the mandatory provisions of Sec. 25F of the Industrial Disputes Act, 1947 (for short, "I. D.Act, 1947"). The workman contended that the employer did not prepare a seniority list nor followed the principle of "Last come first go"and thus did not comply with the provisions of Sec. 25G of the I. D. Act, 1947. The workman

contended that while recruiting new clerks the employer did not comply with the provisions of Sec.25H of the I.D.Act, 1947. The workman contended that termination of her service w. e.f. 29-4-94 is illegal and unjustified and as such she is entitled to reinstatement in service with full back wages and continuity of service.

3. The employer filed written statement at Exb. 5. The employer stated that the reference is bad and not maintainable for the reasons stated in para. 1 of the written statement. The employer stated that the workman was appointed on temporary basis for the first time as a temporary clerk on daily wages of Rs.35 per day from 6-11-91 to 5-2-92. The employer stated that the workman was appointed due to business exigencies and such type of contract service for specific periods was given to the workman on 10-2-92, 2-6-92, 3-9-92, 29-12-92, 21-12-92, 23-3-93 and 23-6-93 stipulating specific period of appointment which automatically came to an end as per the contract of service and as per the appointment letter dated 23-6-93 her last working day was till 22-9-93 on which date her services automatically came to an end. The employer stated that thereafter she was given appointment by letter dated 24-12-93 w.e.f. 27-12-93 and her last working day was 28-4-94 on which date her appointment was to come to an end automatically. The employer denied that the workman continued to be in service without any break from 26-3-93 till her services were terminated. The employer stated that the workman did not work on 23-9-93 and that she was given appointment from 24-9-93 to 22-12-93 vide letter dated 24-9-93 for a specific period and she was again given appointment on temporary basis from 27-12-93 to 28-4-94 vide letter dated 24-12-93. The employer stated that as per the letter dated 24-12-93 the workman's period of service automatically expired on 28-4-93 on which date she was actually relieved from duty but she stated that she would come to the office a couple of days later to hand over the bank files/papers which were in her custody and the Manager agreed in good faith. The employer stated that the workman handed over the papers and files as agreed by her and thereafter requested for relieving order. The employer stated that though it was not necessary as her appointment was only up to 28-4-94, the relieving order was issued to her at her request. The employer stated that the workman managed to sign the muster on 2nd, 3rd and 4th May, 1994 without the knowledge of the Manager and inspite of the fact that relieving her from duty was noted in the muster roll. The employer denied that the services of the workman were terminated with retrospective effect and stated that the demand made by her is totally illegal and unjustified. The employer stated that in order to cope up with the workload during the absence of the permanent employees on account of Privilege leave and their deputation for training in batches of 2 or 3 and till the opening of new branch at Aquem Baixo, Margao and till the process of recruiting permanent staff was completed, the employer appointed certain staff for temporary period. The employer stated that since the workman had gained some experience she was given an opportunity to appear for a written test on 9-4-94 by letter dated 30-3-94 but she refused to accept the said offer thereby implying that she was not interested in employment permanent or otherwise and therefore the employer had no alternative to fill up the vacancies sanctioned by Registrar of Co-operative Societies as per the recruitment rules. The employer denied that the workman had put in 240 days of continuous service prior to termination of her service or that she was required to be given one month's notice or retrenchment compensation or it had violated the provisions of Sec. 25F of the Industrial Disputes Act, 1947. The employer denied that the seniority list was required to be prepared or that the junior staff has been retained or that provisions of Sec. 25G and H of the Industrial Disputes Act, 1947 apply to the workman. The employer denied that the services of the workman are terminated with retrospective effect. The employer denied that the workman is entitled to any relief as claimed by her. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties following issues were framed at Exb. 6.

1. Whether the Party I proves that she worked with Party II continuously for a period of over 240 days prior to the termination of her services w. e. f. 29-4-94 ?
2. Whether the Party I proves that the Party II failed to comply with the provisions of Sec. 25F of the I.D.Act, 1947 and hence the termination of her services is illegal?
3. Whether the Party I proves that the termination of her services by Party II w.e.f. 29-4-94 is illegal and unjustified?
4. Whether Party II proves that the reference is not maintainable and is bad in law for the reasons stated in para. 1(a) to (d) of the written statement?
5. Whether the Party II proves that as per the letter dated 24-12-93 the period of service of Party I automatically expired on 28-4-94 and as such she stood relieved of her duties w.e.f. 29-4-94 ?
6. Whether the Party I is entitled to any relief ?
7. What Award ?

5. My findings on the issues are as follows:

Issue No. 1: In the affirmative.
Issue No. 2: In the affirmative.
Issue No. 3: In the affirmative.
Issue No. 4: In the negative.
Issue No. 5: In the negative.
Issue No. 6: As per para. 23 below.
Issue No. 7: As per order below.

REASONS

6. Issue No. 1, 2, 3 and 5: All these three issues are taken up together because they are interrelated. Besides

making oral submissions the workman as well as the employer have submitted their written arguments. I have considered the oral submissions as well as the written arguments of the parties. Shri Subhas Naik representing the workman has submitted that the workman was employed as a clerk with the employer with effect from 6th November, 1991 and she was issued appointment letters from time to time for specific period. He has submitted that the last of such letters was issued to the workman on 23-6-1993 and she continued to work till 28-4-1994, that is till the date of termination of her service. He has submitted that the issuing of the above appointment letters is admitted by the workman as well as by the employer. He has submitted that the employer has tried to make out a false case by stating that after 23-6-93 two more letters dated 24-9-93 and 24-12-93 were issued to the workman appointing her for specific periods, and that her appoinment came to an end on the expiry of the period of appointment as per letter dated 24-12-93. He has submitted that the workman never admitted that she had received the above said two letters nor the employer has produced any evidence to prove that she had received the said two letters. He has submitted that the employer's witness Mr. Kudwa had admitted that he has no documentary evidence to show that the above letters dated 24-9-93 and 24-12-93 were received by the workman. He has submitted that termination of service of the workman amounts to retrenchment and her case does not fall in any of the exceptions laid down in Sec. 2(00) of the I.D.Act,1947. He has submitted that in the claim statement the workman has mentioned the period during which she worked and also the number of days she worked in the said period and in the written statement the employer has admitted the same. He has submitted that the workman in her deposition has stated that she has produced the attendance register, pay sheets, bonus records in support of the same. He has submitted that the employer's witness Shri Kudwa has not disputed the above claim of the workman, and what is disputed by him is that the workman has not worked after 28-4-94. Shri Subhas Naik has stated that the evidence produced by the workman sufficiently proves that the workman worked with the employer for more than 240 days prior to the date of termination of her service. He has submitted that since the workman had completed more than 240 days of service prior to termination of her service the employer ought to have complied with the provisions of Sec.25F of the I.D. Act, 1947 which prescribe conditions for retrenching the services of a workman. He has submitted that in the present case the workman has stated that at the time of termination neither one month's notice was given to her, nor she was paid notice pay nor she was paid retrenchment compensation. He has submitted that the employer's witness Shri Kudwa has admitted in his evidence that the workman was not given one month's notice nor she was paid one month's wages nor she was paid retrenchment compensation. He has submitted that thus there is violation of the provisions of Sec. 25F of the I.D. Act, 1947 from the employer and as such termination of service of the workman is illegal. Shri Subhas Naik has relied upon the judgment of the Bombay High Court in the case of (1) Mahindra and Mahindra Ltd. V/s Digamber G. Pawasker and others reported in 1997 (2) Bom. L. C. 61 and (2) Tata Consulting Engineers v/s Valsala K. Nair (Ms.) & Ors. reported in 1998 (1) Bom. L.C. 83 in support of his contentions and that of the Madras High Court in the case of K. Rajendra v/s Director (Personnel) Project and Equipment of Corporation of India Ltd. New Delhi and another reported in 1995 II LLJ (suppl.) 240 in support of his contentions.

7. Adv. Shri M. S. Bandodkar representing the employer has submitted on the other hand that the appointment of the workman was temporary and she was appointed for specific periods as per the appointment letters issued to her from tome to time. He has submitted that in the letter of appointment it was stated that her appointment was temporary and she will not have any right as a permanent employee or such right will not accrue to her in any circumstances. He has submitted that the workman was issued appointment letters dated 24-9-93 and 24-12-93 and as per the letter dated 24-12-93 her last working day was 28-4-94. He has submitted that for appointment of permanent staff the procedure prescribed under rules and regulations of the employer are to be followed and also the permission from the Registrar of Co-operative Societies is required, and the necessary documents to that effect have been produced by the employer's witness Shri Kudwa at Exb. E-2, E-3 and E-4. He has submitted that all the temporary staff including the workman were given an opportunity to appear for written test but the workman did not appear for the test though a letter dated 30-3-94 was issued to her and therefore her services were disposed with from 29-4-94 as per the letter of her appointment. He has submitted that the workman did not work continuously from the date of her appointment till the date of termination of her service as it is evident from the muster roll produced by her which show that she was given breaks. He has submitted that the workman did not completed 240 days of service prior to the date of termination of her service. He has submitted that the termination of service of the workman does not amount to retrenchment because as per the last letter of appointment dated 24-12-93 her last working day was 28-4-94 and thereafter her contract was not renewed,and as such her case fell within the clause (bb) of Sec. 2(oo) of the I.D.Act, 1947 which is an exception to "retrenchment", and therefore the provisions of Sec. 25 F of the I.D. Act 1947 did not apply. In support of his above contentions he has relied upon the judgement of the Supreme Court in the case of (1) M. Venugopal v/s Life Insurance Corporation of India reported in 1994 I CLR 544; (2) Director, Institute of Management Development, U. P v/s Pushpa Srivistave, reported in 1992 (4) SCC 33: (3) Escorts Limited v/s Presiding Officer and another reported in 1997 II SCC 521 and (4) Himanshu Kumar Vidyarthi and others v/s State of Bihar and other reported in AIR 1997 SC 3657. He has also relied upon the judgement of the Bombay High Court in the case of Maharashtra State Electricity Board v/s Suresh

Vaidyanath Pagar and others reported in1995 II CLR 1046; the judgement of the Delhi High Court in the case of Sanjay Kumar Sharma v/s National Centre for Trade Information reported in 2001 LLR pg. 51and that of the Kerala High Court in the case of Narmada Building Materials (Pvt.) Ltd., v/s Devassy reported in 1998 (2) L. L. N. 868.

8. In the present case workman has led evidence by examining herself and one Mr. Zulfikar Sahapur whereas the employer has examined its Chief Executive Officer Shri Ganesh Kudwa. The workman in her deposition has stated that she was employed with the employer at Vasco branch as a clerk/typist. However, the appointment letter dated 6-11-91 Exb. W-1 and the other appointment letters issued to her from time to time show that the workman was appointment as clerk and not as clerk/typist. The employer's witness Mr. Kudwa also in his deposition has stated that the workman was appointed as a clerk on daily wages. The letters of appointment produced by the workman show that the workman was appointed on temporary basis. This fact has been admitted by the workman in her cross examination. The services of the workman were terminated from 29-4-1994. The workman has produced the termination letter dated 29-4-94 at Exb. W-7. This letter states that the period for which the workman was appointed to the post of temporary clerk has expired and therefore she is relieved from duty from that day. The contention of the workman is that she had completed 240 days of service prior to the date of termination of her service and therefore the employer ought to have complied with the provisions of Sec. 25F of the I. D. Act, 1947. The contention of the employer on the other hand is that the workman was appointed for specific periods as per the letters of appointment issued to her from time to time and her appointment came to an end on 29-4-94 in terms of the appointment letter dated 24-12-93 Exb. E-1 colly issued to her. The contention of the employer is that the termination of service of the workman does not amount to "retrenchment" as it is covered by clause (bb) of Sec. 2(oo) of the I. D. Act, 1947 and therefore the question of complying with the provisions of Sec. 25F of the Act did not arise. The employer has relied upon various judgments of the Supreme Court and High Court in support of its contention that the case of the workman is covered by clause (bb) of Sec.2(oo) of the I. D. Act, 1947.

9. Before finding out whether the workman completed 240 days of service and whether the employer was required to comply with the provisions of Sec. 25 F of the Act it is necessary to find out first whether the termination of service of the workman amounts to retrenchment as only in that case the question whether the workman completed 240 days of service and the employer complied with provisions of Sec. 25F of the Act would arise. Sec. 2(oo) of the I. D. Act 1947 defines "Retrenchment" as follows:

(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include;

(a) Voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health"

10. The contention of the employer is that the case of the workman falls within the exception to Sec. 2 (oo) of the I. D. Act, 1947, that is, clause (bb) of the said Section. The said clause lays down that termination of service of the workman as a result of non renewal of Contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein does not amount to retrenchment. It is the contention of the employer that the workman was appointed by various letters for specific periods mentioned therein and the last of such appointment letter dated 24-12-93 stated that her appointment was upto the period 28-4-94. The employer's contentions is that the workman's termination of service was on account of non renewal of contract of employment and therefore it did not amount to retrenchment. The gist of the decisions of the Supreme Court and of the High Courts relied upon by Adv. Shri Bandodkar, representing the employer, which have been referred to my me earlier is that the termination of service of an employee as a result of the contract of employment having been terminated under the stipulations specifically provided under the Rules or Regulations or the order of appointment of the employee shall not be deemed to be "retrenchment" within the meaning of Sec.2 (oo) of the I.D.Act 1947 since it is covered by exception (bb). Similarly if the appointment of the employee is on the basis of need of work and it is for a specific period the termination does not amount to retrenchment because the service comes to an end on the expiry of the period for which the employee is appointed and therefore it would be covered by clause (bb) of Sec. 2 (oo) of the Act.

11. In the present case the evidence produced by the workman shows that the workman was employed as a clerk on temporary basis for specific periods. In this respect appointment letters were issued to the workman from time to time. These letters have been produced at Exb. W-1 to W-6 colly. According to the workman the last letter of appointment issued to her is dated 23-6-93 Exb.

W-6 colly. The workman in her deposition has stated that after 23-6-93 she did not receive any appointment letter. The appointment letter dated 23-6-93 Exb. W-6 colly mentions that the appointment of the workman is till 22nd September, 1993. The said letter states that on the expiry of the said period the services of the workman would automatically come to an end. Therefore if there was no renewal of contract after 22nd September, 1993, the services of the workman would have stood terminated automatically and in that case as per the law laid down by the Supreme Court and the High Courts in the cases relied upon by the employer and which have been referred by me above, the termination would fall under clause (bb) of Sec. (oo) of the I.D.Act, 1947 and therefore the termination would not amount to retrenchment. However, the workman in her deposition has stated that even after the expiry of the date 22nd September, 1993, she continued to work with the employer and that she had worked continuously from 6-11-91 till 4-5-94 except for one or two days break in between when she remained absent for about one or two days. The contention of the workman that she worked even after 22nd September, 1993 till 4-5-94 is supported by the documentary evidence produced by the workman namely the attendance register Exb. W-10 colly. The contention of the employer is that after expiry of the employment period of the workman on 22nd September, 1993, she was issued another letter of appointment dated 24th September, 1993 appointing her till 22nd December, 1993 and that thereafter she was issued another letter of appointment dated 24th December, 1993 appointing her till 28th April, 1984. The employer has produced the above said letters at Exb. E-1 colly. According to the employer both the said letters provided specific period of appointment to the workman. However, the workman in her cross examination denied that she at any time received the said letters. Therefore the burden was on the employer to prove that the workman had received the said letters, and this was more so because the employer's contention is that the appointment of the workman was for specific periods and the last of such specific period was till 28-4-94 as per the appointment letter dated 24-12-94. No evidence has been produced by the employer to prove that the above said letters were received by the workman. The employer's witness Shri Kudwa has admitted in his cross examination that he has no documentary evidence to prove that the workman had received the said letters. The workman's contention is that the employer has fabricated the above said letters. The employer's witness Shri Kudwa has denied this suggestion. However, the reply dated 27-10-94 Exb. W-15 of the employer filed in the conciliation proceedings lends support to the above contention of the workman. The said reply has been filed by the employer before the Asstt. Labour Commissioner who had held the conciliation proceedings on the dispute raised by the workman. In this reply the employer has referred only upto the letter of appointment dated 23-6-1993. In this reply the employer has stated that the last working day of the workman was 22-9-93 as per the last appointment letter dated 23-6-93 and that on humanitarian grounds her temporary services were taken back on same terms and conditions and by letter dated 29-4-94 her services were dispensed with and she was relieved from duty. Thus there is clear admission from the employer that the last letter of appointment which was issued to the workman was 23-6-93 and that thereafter her services were continued on humanitarian ground. If the employer had issued appointment letters dated 24-9-93 and 24-12-93 as contended in these proceedings, the employer would have definitely stated so in its reply filed in the conciliation proceedings. Therefore there is every reason to believe the contention of the workman that the said letters 24-9-93 and 24-12-93 have been fabricated subsequently as otherwise the employer would have definitely stated in the reply dated 27-10-94 Exb. W-15 that as per the letter dated 24-12-93 the last working day of the workman was 28-4-94 and thereafter from 29-4-94 her services automatically stood terminated. No such stand was taken by the employer and on the contrary the employer stated that after the last appointment letter dated 23-6-93 her services were continued on humanitarian grounds and her services were dispensed with by letter dated 29-4-94. I therefore hold that there is absolutely no evidence from the employer that the services of the workman were engaged for specific periods by letters dated 24-9-93 and 24-12-93 and that as per the last appointment letter dated 24-12-93 her last working day was 28-4-93. This being the case the employer cannot take the shelter under clause (bb) of Sec. 2 (oo) of the I.D.Act, 1947.

12. The workman has relied upon the judgements of the Bombay High Court in the case of Mahindra and Mahindra Ltd. (supra) and Tata Consulting Engineers (supra). In the case of Mahindra and Mahindra Ltd., (supra) the Bombay High Court observed that the employee had worked for a period of three years and he had claimed the status of permanency. The company had not led evidence to show that on the ground of computerisation they were not willing to renew the contract of employment of the employee, and on the other hand the evidence showed that other workers who were also appointed on termporary basis were made permanent. There was no evidence as to whether those workers were appointed prior in point of time of the employee or whether he was junior to the other workers and that the work for which the employee was appointed had come to an end. The Bombay High Court held that in the circumstances the Labour Court was justified in holding that the workman was appointed in a permanent post and when he had worked for three years and had completed 240 days, the employee was entitled to be paid compensation as per the provisions of Sec. 25F of the I.D. Act, 1947. In the case of K. Rajendra (supra) the Madras High Court has held that exceptions as contained in Sub.Clause (bb) of Sec. 2 (oo) of the I. D. Act, 1947 will have to be strictly construed and clause (bb) should be made applicable to such cases where the work ceases with the employment or the post itself ceases to exist. The High Court has held that the clause (bb) cannot be

made applicable to a case when the employer resorts to contractual employment as device to simply take it out of clause (oo) of Section 2 of the Act, notwithstanding the fact that the work for which the workmen are employed continues or the nature of the duties which the workmen was performing is still in existence. In the present case also the workman was in service for almost two and half years. The workman has stated that after her appointment on 6-11-91 the employer employed 7 more persons as clerks on temporary basis namely Nathaline Pinto, Nutan Pandit, Sadhya Sawant, Sangeeta Naik, Sharmila Naik, Mamta Shetye, and Sharmila Dicholkar. In support of her above statement she has produced the appointment letters of Nathaline Pinto, Sharmila Dicholkar, Sandhya Sawant, Sharmila Naik, Sangeeta Naik and Manoj Chari at Exb.W-9 colly. She stated that out of the above 7 persons some were subsequently confirmed. She also stated that after termination of her service the employer employed five more clerks at Vasco namely Felecia Rodrigues, Deepa Padyar, Suprita Kamat, Sulaksha Itgi, Harsha Marathe and one clerk at Margao by name Manoj Chari. She stated that Felecia Rodrigues and Manoj Chari have been confirmed in service. Neither in the cross examination of the workman nor in the evidence of the employer it was denied that the 7 persons whose names are given by the workman and whose appointment letters have been produced at Exb. W-9 colly were employed as temporary clerks after the appointment of the workman as temporary clerk on 6-11-91. It was also not denied that some of them were subsequently confirmed, and 5 clerks were appointed at Vasco and one at Margao after the termination of service of the workman. The contention of the employer is that the workman was not appointed as permanent clerk because she had not appeared for the written test though she was called upon to do so by letter dated 30-3-94 whereas the other temporary clerks who were made permanent had appeared for the written test. The workman could not be confirmed in that post because she had not appeared for the written test. The employer's witness Shri Kudwa has stated so in his evidence and in the cross examination of the workman also this fact is suggested to her. The employer's witness Mr. Kudwa has stated that the letter dated 30-3-94 asking the workman to appear for the written test was hand delivered to her by the peon Mr. Dulapkar. However, in his cross examination he has admitted that there is no evidence to show that the receipt of the letter dated 30-3-94 Exb. E-5 was acknkowledged by the workman. Moreover the employer did not examine the peon Mr. Dulapkar who is said to have delivered the letter to the workman. Thus there is no evidence from the employer to prove that the workman was asked to appear for the written test so that she could get herself appointed as the permanent clerk. The above evidence shows that the post of the clerk to which the workman was appointed on temporary basis was a permanent post and the work for which the workman was employed continued and existed. Therefore in my view the principles laid down by the Bomaby High Court and the Madras High Court in the above referred cases are applicable to the workman.

13. Shri Subhash Naik, representing the workman has also relied upon the judgement of the Bombay High Court in the case of Tata Consulting Engineers (supra). In this case Mrs. Valsala Nair was temporarily appointed vide order dated 29-1-1986 and her appointment was extended by subsequent orders dated 31-3-86, 23-6-86, 27-9-86 and 18-12-86. As per the said order of appointment dated 18-12-86 her appointment was extended upto 27-1-1987. By order dated 25th February, 1987 she was informed by the employer that her services would be no more required from the close of work on 27th February, 1987. Ms. Valsala Nair challenged her termination on various grounds including violation of Sec. 25F of the I. D. Act, 1947. The employer took the defence that though the services of Ms. Naik came to an end on 27-1-87 her services were continued verbally and thereafter by communication dated 25-2-87 she was informed that her contract would not be renewed after 27-2-1987. The Labour Court held that the termination amounted to retrenchment and there was breach of Sec. 25F of the I. D. Act and as such ordered re-instatement with continuity of service and back wages. This award of the Labour Court was challenged by the employer before the Hon'ble Bombay High Court on the ground that there was no retrenchment since termination was the result of non renewal of contract of employment. In para. 4 of the judgement the High Court held as follows:

> ".....In the present case, it would be seen that though the workman was employed initially for a period of two months by the order dated 29-1-1986, her employment was extended by subsequent orders. The last of such order placed on record is the order dated 18-12-1986 according to which the services of the workman was extended upon 27-1-87. It is not disputed by the employer that even thereafter the workman was continued in service, though according to the employer, the said communication was verbal and only upto 27-2-1987. The order dated 27-2-1987 does not say that after the expiry of period on 27-1-87 the services of the workman was extended verbally only upto 27-2-1987. Thus, on the facts which have come on record, it cannot be said that the case was covered under clause (bb) of Sec. 2 (oo) and it cannot be said that the workman's termination was not retrenchment ....."

14. In the present case also there is no evidence to show that after 22nd September, 1993 the appointment of the workman was extended for specific period from time to time. It is not in dispute that the workman continued in service even after the expiry of the date 22nd September, 1993. The contention of the employer is that after 22nd September, 1993 the workman was employed for specific periods by letter dated 24-9-93 and 24-12-93. It has been held by me earlier that the employer has failed to prove that by letters dated 24-9-93 and 24-12-93 the workman was employed for specific periods. There is no evidence that the above said letters were served on the workman. The order of termination dated 29th April, 1994 Exb. W-7 does not

refer to the letter dated 24-12-93 nor the said order states that in terms of the said letter the period of employment expired on 29-4-1994. Therefore in view of the Judgments above referred to and more particularly the judgement of the Bombay High Court in the above case of Tata Consulting Engineers (supra) it cannot be said that the case of the workman was covered under clause (bb) of Sec. 2(oo) of the I. D. Act, 1947. I therefore hold that the termination of service of the workman is not covered by clause (bb) of Sec. 2(oo) of the I.D. Act, 1947 which is an exception to Sec. 2 (oo). The order dated 29-4-94 terminating the service of the workman has been produced at Exb. W-7. The said order states that the workman is relieved from duty because the period for which she was appointed has expired. The said order does not state the period for which she was appointed. It has been held by me that the employer has failed to prove that the workman was appointed till 29-4-94. It has been held by me that the termination of service of the workman does not fall under clause (bb) of Sec. 2 (oo) of the I. D. Act, 1947. The termination order itself shows that the services of the workman were not terminated as a matter of punishment by way of disciplinary action nor the case of the workman falls within the exceptions laid down in Sec. 2 (oo) of the I. D. Act, 1947. Therefore in my view the termination of service of the workman amounts to retrenchment within the meaning of Sec. 2 (oo) of the I. D. Act, 1947.

15. Sec. 25F of the I. D. Act, 1947 prescribes the procedure for retrenching the services of a workman. It lays down that the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of one month's notice and he has been paid compensation at the rate of 15 days average wages per each completed year of service or any part thereof in excess of six months. Sec.25(B) of the Industrial Disputes Act, 1947 defines 'continuous service'. It states that a person shall be deemed to be in continuous service under an employer for a period of one year, if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. In the present case the last appointment letter is dated 23-6-94 Exb. W-6 colly. As per this appointment letter the workman was employed from 23-6-1993. There is no further appointment letter issued to the workman. As per the said appointment letter the last working day of the workman was 22nd September, 1993. However, even after the expiry of the said date the workman has continued to work till her services were said to have been terminated from 29-4-94. The contention of the workman is that she has worked till 4-5-94, and not till 28-4-94. However even if it is considered that the workman had worked till 28-4-94 still the number of days she worked 12 months preceding the date of termination of her service works out to about 300 days. This is supported by the attendance register produced at Exb. W-9 colly. Therefore the workman was in service, for more than 240 days prior to the date of termination of her service. This being the case the provisions of Sec.25F of the I.D.Act 1947 applied to her.

16. Now the question is whether the employer complied with the provisions of Sec. 25F of the I.D. Act, 1947 and if not what is the effect of non-compliance. The workman in her deposition has stated that at the time of termination of her service she was not given one month's notice, nor she was paid notice pay nor retrenchment compensation. This statement of the workman was not denied in her cross examination by the employer nor anything has been brought on record to show that she was paid notice pay or retrenchment compensation. Infact the employer's witness Shri Kudwa has admitted in his cross examination that neither one month's notice, nor notice pay nor retrenchment compensation was paid to the workman. The Supreme Court in the case of M/s. Avon Services Production Agency Pvt. Ltd., v/s Industrial Tribunal Hariyana and others reported in AIR 1970 SC 170 has held that giving notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the provision prescribing the conditions precedent for valid retrenchment in Sec. 25F renders the order of termination invalid and in-operative. Same principles are laid down by the Supreme Court in the case of Gammon India Ltd., v/s Niranjan Das reported in (1984) 1 SCC 509. In this case the Supreme Court has held that in the absence of compliance with the requisites of Sec.25 F, the retrenchment bringing about the termination would be void ab-initio. Therefore in the present case since there was no compliance of the provisions of Sec. 25 F of the I. D. Act, 1947 from the employer, the termination of service of the workman becomes illegal and unjustified and I hold so accordingly. The workman has contended that the termination is also illegal because no seniority list was prepared by the employer prior to termination of her service and did not follow the principles of "Last come first go" and also because the termination is with retrospective effect. The employer has admitted that some temporary clerks were appointed after the appointment of the workman on 6-11-91. Their appointment letters have been produced at Exb. W-9 colly. The employer has not denied this fact. The employer has also admitted that no seniority list was prepared prior to the termination of service of the workman. In my view in the present case the procedure of preparing of seniority list and complying with the provisions of Sec. 25 G prescribing the principles of "first come last go", did not apply to the workman's case. This is because the above procedure is to be followed only in case when the employer wants to retrench the services of a workman. That is, when the retrenchment is admitted by the employer. In the present case the employer did not terminate the services of the workman by way of retrenchment but according to the employer the services of the workman stood terminated on the expiry of the period for which according to the employer the workman was employed.

17. The other contention which has been raised by the workman is that the termination is with retrospective effect. It is the case of the workman that she had worked till 4-5-94 and therefore her services could not have been terminated with effect from 29-4-94. In support of her this contention she has relied upon the attendance register Exb.-10 colly, and she has examined one witness by name Mr. Zulfikar Shapur. The workman has stated in her deposition that she reported for work on 29-4-94 and 30-4-94 but she was not allowed to do so by the Manager and no reasons were given by him for doing so. She stated that she reported for work on 2-5-94 and she worked for the whole day, and that on 3-5-94 when she was working at about 10.30 a. m. the Manager told her that there was a phone call from the Chairman that she should be sent back and accordingly she was sent home at about 10.30 a.m. She stated that she reported for work on 4-5-94 and signed the muster roll and thereafter the Manager handed over a letter dated 29-4-94 to her mentioning therein that she was relieved from duty from that day. She stated that the Manager asked her to hand over the keys of the drawer and files which were in her custody which was done by her. She stated that she wrote a letter dated 4-5-94 to Asst. Chief Executive Officer asking him to acknowledge the receipt of the drawer keys, rubber stamp and files from her. She produced the said letter at Exb. W-8 and stated that the Manager Mr. Kudwa had made the endorsement on the said letter acknowledging the receipt of the keys, files and rubber stamp and she identified his signature on the said letter. In her cross examination she denied the suggestion that she signed the muster roll forcibly though she did not work after 29-4-94. She stated that she was paid salary till 28-4-94 because the salary register was prepared till the date 28-4-94 for the month of April, 1994. The workman has examined Mr. Zulfikar Sahapur in support of her case. He has stated that he was working as a clerk cum typist since 1988 at Vasco branch of the employer. He stated that he had typed the letter dated 29-4-94 Exb.W-7 and that he was told by Chief Executive Officer to type the said letter back dated. He stated that the said letter was typed by him on or about 2-5-94. In his cross examination only suggestions were put to him that he was not asked to type the letter back dated; that he typed the letter dated 29-4-94 on the same date; that he did not type the letter on 2-3-94. All the above suggestions were denied by him. The employer's witness Mr. Kudwa stated in his deposition that the workman had told him that she would hand over the charge to him within one or two days after 28-4-94 and that she handed over the charge to him on 4-5-94. He admitted the letter dated 4-5-94 Exb. W-8 whereby the charge was handed over by the workman. He stated that the letter dated 29-4-94 was issued at the request of the workman and that she signed the muster roll on 2nd, 3rd and 4th May 1994 unauthorisedly though remark was put in the muster roll that she was relieved from 29-4-94.

18. From the evidence which is discussed above it can be seen that the employer did not deny that Mr. Zulfikar Sahapur was working with the employer at Vasco branch when the workman was working there, nor it was denied that the letter dated 29-4-94 Exb. W-7 was typed by him. What was denied was that he typed the said letter on 2-5-94. However, the employer has not brought on record anything to show why their own employee has deposed against them and has deposed in favour of the workman. The employer's witness Mr. Kudwa has tried to improve the case by stating that the letter dated 29-4-94 was issued to the workman at her request and that the workman had told him that she would hand over the charge within one or two days after 28-4-94. No suggestions to this effect were put to the workman in her cross examination. Also, if according to the employer the workman was relieved on 29-4-94 why she should have said that she would hand over the charge after two or three days. Nothing has been brought on record by the employer to show if any formalities were required to be done/completed before handing over the keys, the rubber stamp and the files to the Manager. If the workman could hand over the charge on 4-5-94 by handing over the keys of the drawer, the rubber stamp and the files she could have very well done so when according to the employer she was relieved on 29-4-94. There was no need for the workman to state that she would hand over the charge two or three days after 28-4-94. It is also difficult to believe that the letter dated 29-4-94 was typed on 29-4-94 and it was delivered on 4-5-94 to the workman. This is because in para. 8 of the written statement the employer has stated that on 4th May, 1994 the workman handed over the papers and files as agreed by her and then requested orally for relieving order, and therefore a relieving order was issued as requested by her though it was not necessary as her appointment was up to 28th April, 1994. Thus, if it is the case of the employer that the relieving order was requested by the workman after she handed over the papers and files on 4-5-94, then how is that the said letter was typed on 29-4-94, that is much prior to 4-5-94 and more so when according to the employer the relieving order was not necessary. This itself shows that the employer has falsely claimed that the letter dated 29-4-94 was typed on 29-4-94. In the circumstances the statement of Mr. Zulfikar Shapur that the letter dated 29-4-94 was typed by him on 2-5-94 with back date is liable to be believed. The contention of the workman that she worked even after 28-4-94 till 4-5-94 is supported by the attendance register Exb. W-10 colly. The workman has stated that she was not allowed to work on 29th and 30th April, 1994 though she had reported for work. She has stated that she had worked on 2nd May, 1994 and she had signed the muster roll. She has stated that on 3-5-94 she was asked to go home at about 10.30 a.m. and on 4-5-94 she signed the muster roll and then she was given the letter dated 29-4-94 stating that she was relieved from duty. According to the employer the workman was relieved from duty from 29-4-94 because the period of her employment had expired on 28-4-94 as per her appointment letter dated 23-12-93. However, it has been held by me earlier that the employer has failed to prove that the appointment

letter dated 23-12-93 was issued to the workman. Therefore the letter dated 29-4-94 is in fact the letter terminating the services of the workman from 29-4-94. The muster roll/attendance register for the month of May, 1994 has been signed by the workman on 2nd, 3rd and 4th of May, 1994. The employer's witness Mr. Kudwa who was the Manager of Vasco branch has admitted that the workman has signed the attendance register on the above dates. However, according to him she has signed the same unauthorisedly though she has not worked. This statement of Mr. Kudwa is difficult to be accepted. It is difficult to believe that a person who has been relieved from 29-4-94 would be allowed by the employer to sign the muster roll even after the said person is no more in service. It is to be remembered that muster roll is an important document.This document proves the employment of a person, and therefore an employer would not allow any person to sign the same and more so when it is maintained by the employer. In the absence of any evidence from the employer that the said muster roll was signed by the workman unauthorisedly, the workman's contention that she worked till 4-5-94 is to be believed. In my view the evidence which has been discussed by me above sufficiently proves that the employer terminated the services of the workman with retrospective effect, that is, from 29-4-94.

19. Now the question is whether the employer's action of terminating the services of the workman with retrospective effect is illegal. It is but obvious that there cannot be termination of service of a person with retrospective effect. Such termination is illegal. Shri Subhash Naik, representing the workman has relied upon the judgement of the Calcutta High Court in the case of Satyendra Kumar Dutta v/s Administrator, District Board, reported in 1959 I L L J 595. In this case the Calcutta High Court has held that termination of service of an employee with retrospective effect is illegal. In the circumstances in the present case also I hold that the employer terminated the services of the workman with retrospective effect and hence the termination is illegal. Even otherwise, it has been already held by me that termination of service of the workman is illegal because the employer has failed to comply with the provisions of Sec. 25 F of the I.D.Act,1947. In the light of what is discussed above I hold that the workman has succeeded in proving that termination of her service by the employer with effect from 29-4-1994 is illegal and unjustified. I, therefore answer the issue nos. 1, 2 and 3 in the affirmative and the issue no.5 in the negative.

20. Issue No. 4: The burden was on the employer to show as to how the reference was not maintainable. No evidence has been produced by the employer to prove that the reference is not maintainable. In my view, the employer has totally failed to discharge this burden. The employer in their written statement have tried to contend that if according to the workman she worked till 4-5-94, then order of reference mentioning the date of termination as 29-4-94 is bad. There is no substance in this contention of the employer. In the case of termination one has to go by the order of termination. The workman in her cross examination has stated that in the reference the date of termination is mentioned as 29-4-94 because in the letter dated 29-4-94 Exb. W-7 it was stated that her services are terminated from 29-4-94. This being the case, the order of reference, mentioning the date of termination as 29-4-94, is not bad. As mentioned earlier, the employer has totally failed to prove that the reference is bad and not maintainable. I, therefore answer the issue no. 4 in the negative.

21. Issue No. 6: This issue pertains to the relief to be granted to the workman. It has been held by me that the termination of service of the workman by the employer is illegal and unjustified. Shri Subhash Naik, representing the workman has relied upon the judgements of the Bombay High Court in the case of (1) Sayyad Anwar v/s Divisional Controller, MSRTC, Aurangabad and others, reported in 2000 (2) Bom. L. C. 388; (2) Khandu Rambhan Bhosele v/s Western Maharashtra Development Corporation Ltd, Distillery Divn. and another reported in 2000 (2) Bom. L. C. 392; (3) Insurance Employees Association v/s Life Insurance Corporation of India and another reported in 1995 (1) Bom.L.C. 270 and (4) Tata Consulting Engineers v/s Valsala K. Nair (Ms) & Ors. reported in 1998 (1) Bom. L. C.83, in support of his contention that once the termination is held to be illegal and unjustified the workman is entitled to reinstatement in service with full back wages. Adv. Shri Bandodkar, representing the employer submitted on the other hand that it is not necessary that in every case of termination of service if the termination is held to be illegal and unjustified the reinstatement of the workman should be ordered. He submitted that considering the fact that the workman was appointed as temporary clerk and that she had refused to appear for the examination for permanent post, she should be paid compensation in lieu of reinstatement. He relied upon the judgement of the Bombay High Court in the case of Shankar Krishna Nihan v/s Bhide & Sons Pvt. Ltd., reported in 1983 (46) FLR 95 and that of the Madras High Court in the case of Mount Mettur Pharmaceuticals Ltd.,v/s Second Additional Labour Court, Madras, reported in 1985 ILLJ 505.

22. I have gone through the judgments relied upon by both the parties. In the case of Sayyad Anwar (supra) the Bombay High Court in para. 3 of the judgement has held that it is now well settled that if an order of dismissal or termination or discharge or retrenchment is set aside as illegal, improper and as an unfair labour practice, the normal relief of reinstatement with full back wages and continuity of service must follow unless the employer pleads and proves and brings on record cogent material to enable the labour court to depart from the aforesaid normal rule. In the case of Khandu Rambhan Bhosele (supra) Petitioner was reinstated but without back wages. The Bombay High Court held that like every human being and every creature on earth, the petitioner tried to make efforts for living and that by doing some labour work instantly available he did not choose to run after uncertain job of a watchman. The High Court held that in these days of acute unemployment it is not possible to hold that any unemployed man/woman would not make any effort to get some job, alternative or sundry work to keep his/her

soul and body together and put even some food in the mouths of the family members, and the petitioner had spoken the truth that he was doing some labour work to pull on his life. The High Court held that in the circumstances it would be cruel and harsh to deny the normal relief of back wages to the petitioner after undergoing an ordeal of long drawn battle of unequal fight. In the case of Life Insurance Corporation of India (supra) the Bombay High Court has held that when the order of termination is set aside, reinstatement and payment of full back wages is ordinarily the normal rule, but there may be extraordinary circumstance which may, in a given case, justify non-payment of back wages whether in full or part. Same principles has been laid down by the Bombay High Court in the case of Tata Consulting Engineers (supra). In this case the High Court has further held that merely because the workman was employed as a temporary workman at the time of termination of her service, that would not justify the refusal to grant reinstatement. In the case of Shankar Krishna Nikam (supra), the authority relied upon by the employer, the Bombay High Court has held that it is not a must in every case of retrenchment effected without payment of the retrenchment compensation that reinstatement must follow and that the rule can always be relaxed whenever such relaxation is found justified. Same principles are laid down by the Madras High Court in the case of Mount Mettur Pharmaceuticals Ltd. (supra). In my view what emerges from the above decisions is that the ordinary or the normal rule is that when the termination of service of a workman is held to be illegal and unjustified, he is entitled to reinstatement in service with full back wages unless there are reasons which do not warranty reinstatement or full back wages. These reasons should be just and reasonable. In the present case I do not find any reason to deviate from this normal rule. No evidence has been brought on record by the employer to show that the past service record of the workman was not good nor any evidence has been produced by the employer to show that the workman after termination of her service was gainfully employed. Infact there is no evidence whatsoever from the employer to show why the reinstatement or full back wages should not be granted to the workman. Merely because the workman did not appear for the examination of the permanent post, she cannot be denied reinstatement. Infact it has been held by me that the employer has failed to prove that the workman was served with the letter dated 30-3-94 asking her to appear for the written test. Therefore the workman cannot be blamed for her non appearance for the written test and interview for permanent post. It is an admitted fact that at the time of termination of service, the workman was working as a temporary workman.The Supreme Court in the case of Surendra Kumar Verma and others v/s Central Government Industrial Tribunal, New Delhi, reported in 1981 I LLJ 386 has held that the removal of an order terminating the services of the workman must ordinarily lead to the reinstatement in service of the workman as it is as if the order has never been made and so it must ordinarily lead to back wages also. The Supreme Court has held that in exceptional cases the Court has discretion to mould relief and make consequential orders. In that case the workman was appointed temporary and on holding his retrenchment as bad in law he was directed to be reinstated in service with back wages. In the case of State Bank of India v/s Sundara Money reported in AIR 1976 S.C.1111, the employee was appointed on temporary basis. The Supreme Court held that termination of service of the employee amounted to retrenchment and since the provisions of Sec. 25F of the I. D. Act 1947 were not complied with by the employer, he was ordered to be reinstatement in service with full back wages. In para. 10 of the judgement, the Supreme Court held as follows:

> "What follows ? Had the State Bank of India known the law and acted on it, half month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off,....."

23. In the present case no exceptional case has been made out by the employer so as to deny the workman the relief of reinstatement and/or back wages. No evidence has been brought on record by the employer to show that the past service record of the workman was not good or that she was employed after the date of termination of her service. Therefore as per the law laid down by the Supreme Court and High Courts in the above referred cases the ordinary or normal rule is that the workman is liable to be reinstated in service with full back wages and continuity in service. I do not find any reason to deviate from the above rule in the present case. I, therefore hold that the workman is entitled to reinstatement in service with full back wages and all other consequential benefits and continuity in service. I, therefore answer the issue no. 6 accordingly.

Hence, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. The Citizen Co-operative Bank Ltd., Vasco-da-Gama-Goa, in terminating the services of Kum. Karuna Dias, Clerk,with efffect from 29-4-1994 is illegal and unjustified. The workman Kum. Karuna Dias is ordered to be reinstated in service with full back wages and all other consequential benefits with continuity in service.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

GOVERNMENT PRINTING PRESS,
PANAJI-GOA
PRICE—Rs. 6.00